

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3855 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgement?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

A A VOHRA

Versus

STATE OF GUJARAT

Appearance:

MR AS SUPEHIA for the Petitioner.

Ms.Harsha Devani, AGP, for the Respondents.

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 10/01/2002

ORAL JUDGEMENT

The petitioner was serving as a Deputy Mamlatdar and he retired from the aforesaid post, by reaching the age of superannuation, on 28.2.1998. While he was in service, he was subjected to charge-sheet dated 6.7.1987 for various charges. Subsequently, Enquiry Officer was also appointed and regular departmental enquiry was

conducted against the petitioner. On conclusion of the enquiry proceedings, the Enquiry Officer found that the charges against the petitioner were not proved and charge-sheet was withdrawn on 23.7.1999. Since at the time of superannuation, an enquiry was pending, he was permitted to retire under the provisions of Rule 189-A of the BCSR, but his gratuity amount as well as amount of commuted pension was withheld by the Department. After the conclusion of the enquiry and after the aforesaid order, exonerating the petitioner from the charges, the petitioner was paid his amount of gratuity and amount of commuted pension and the benefit of higher pay scale, which was also withheld because of the pendency of the enquiry. Initially, the petitioner had filed a writ petition before this Court, being Special Civil Application No.5335 of 2000. However, he was permitted to make a representation and that petition was accordingly disposed of.

Thereafter, by an order dated 22nd February, 2001, it was decided that so far as the delay in payment of gratuity amount is concerned, the petitioner will be entitled to interest at the rate of 12% per annum for the delayed payment and the period for which such interest is granted is also stated in the said order, viz. between 1.6.1998 and 3.11.1999. Interest at the rate of 12% per annum for the aforesaid period for the delayed payment of gratuity is accordingly paid by the State Government. The Authority has not granted interest on delayed payment of commuted pension as well as delayed payment of higher grade scale. The petitioner, therefore, has again approached this Court by way of this petition, with a prayer that the Government should be directed to pay interest on the same line on which he was paid interest on delayed payment of gratuity on both the aforesaid counts, i.e. commuted pension, as well as amount regarding higher grade scale. The petitioner has also claimed further amount of interest for delayed payment of gratuity for three months as interest is paid after a period of three months from the date the petitioner retired from service.

The aforesaid petition is resisted by the respondents by filing affidavit-in-reply. The affidavit-in-reply is filed by one G.M.Damor, Additional Collector, District : Sabarkantha. Paragraphs 4 and 5 of that reply, which are relevant, run as under :-

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4. With respect to the averments made

in para 4 the same are denied. The petitioner is superannuated on 28.2.98. On the day disciplinary enquiry was pending. The petitioner was superannuated under Rule 189 of BCSR. By the order dated 23.7.99 i.e., after the date of superannuation the charge sheet was withdrawn. The petitioner is paid the amount of Rs.162690/- towards gratuity, Rs.219912/- towards commuted pension on 4.11.99. The amount of Rs.50771/- towards the higher pay scale was paid to the petitioner on 8.9.99. It is further submitted that the final decision on enquiry was taken on 23.7.99. Thereafter by the order dated 10.8.99 i.e., within a short period the benefit of higher pay scale is given to the petitioner and the amount is paid on 8.9.99.

5. It is further submitted that the pension papers were prepared on 15.9.99 and were submitted to the Director of pension. The pension case of the petitioner was sanctioned on 19.10.99 and the petitioner is paid the amount of pension and gratuity on 4.11.99. Thus the retiral benefit is paid to the petitioner immediately. In this circumstances the petitioner is not entitled to get the benefit.

... .."

Mr.Supehia, learned Advocate for the petitioner, relied upon the Government Resolution dated 17th July, 1983, which provides that the gratuity will be deemed to have fallen due on the date following the date of retirement for the purpose of payment of interest on delayed payment of gratuity. Mr.Supehia, therefore, submitted that if interest is to be paid on delayed payment of gratuity, on the same principle, interest is required to be paid on delayed payment of commuted pension and delayed payment of the benefit of higher grade scale. Relying upon the said G.R., Mr. Supehia submitted that it is a fit case in which respondents should be directed to pay interest at the rate of 18% per annum for delayed payment of commuted pension and higher grade scale. He also further submitted that even interest on the delayed payment of gratuity was also given after a period of three months from the date of retirement of the petitioner and, as such, he should have been given the same immediately from the date of

retirement and, therefore, interest for the aforesaid three months is required to be paid so far as delayed payment of gratuity is concerned.

Mr.Supehia has also relied upon the judgment of the Apex Court, which is annexed in the compilation at page 17. In Civil Appeal No.687 of 2000, in the case of Vijay L. Mehrotra v. State of U.P. and others, 2000 AIR SCW 2678, the Apex Court has laid down as under :-

"

3. In case of an employee retiring after having rendered service, it is expected that all the payment of the retiral benefits should be paid on the date of retirement or soon thereafter if for some unforeseen circumstances the payments could not be made on the date of retirement.

4. In this case, there is absolutely no reason or justification for not making the payments for months together. We, therefore, direct the respondent to pay to the appellant within 12 weeks from today simple interest at the rate of 18 per cent with effect from the date of her retirement, i.e. 31st August, 1997 till the date of payments.

... .."

He further submitted that in Special Civil Application No.12815 of 2000, this Court (Coram : C.K. Buch, J.) has awarded interest for delayed payment towards commuted pension and gratuity.

Ms.Devani, learned AGP, on the other hand, has strongly relied upon the judgment of the Apex Court in R. Veerabhadram v. Govt. of A.P., (1999) 9 SCC 43. Paragraph 7 of the aforesaid judgment provides as under :-

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7. The payment of gratuity was withheld, in the present case, since the criminal prosecution was pending against

the appellant when he retired. Rule 52(1)(c) of the A.P. Revised Pension Rules, 1980 expressly permits the State to withhold gratuity during the pendency of any judicial proceedings against the employee. In the present case, apart from Rule 52(1)(c), there was also an express order of the Tribunal which was binding on the appellant and the respondent under which the Tribunal had directed the death-cum-retirement gratuity was not to be paid to the appellant till the judicial proceedings were concluded and final orders were passed thereon. In view of this order as well as in view of Rule 52(1)(c), it cannot be said that there was any illegal withholding of gratuity by the respondent in the case of the appellant. We, therefore, do not see any reason to order payment of any interest on the amount of gratuity so withheld.

... .."

The learned AGP has also relied upon subsequent Resolution dated 17th July, 1991, in which it is clarified that for delayed payment of gratuity, interest is required to be paid at the rate of 12% per annum after a period of three months from the date of retirement. Relying upon the aforesaid Resolution, Ms. Devani, learned AGP, submitted that the Government has paid interest at the rate of 12% per annum for the delayed payment of gratuity and the said decision is in consonance with the aforesaid Resolution dated 17th July, 1991. So far as interest at the rate of 12% per annum is concerned, that has been prescribed in Resolution dated 8th December, 1994. Accordingly, the amount of gratuity, with interest at the rate of 12% per annum after three months from the date of retirement is properly paid to the petitioner on the basis of the aforesaid G.Rs.

I have considered the arguments advanced by both the sides in this matter.

So far as the decision relied on by the learned counsel for the petitioner in *Vijay L. Mehrotra v. State of U.P. and others*, 2000 AIR SCW 2678 (supra), is concerned, it was found by the Apex Court in the said decision that there was absolutely no reason or justification for not making the payments for months together. Under the said circumstances, the said

direction was issued by the Apex Court to pay interest at the rate of 18% per annum.

So far as the decision of this Court in Special Civil Application No.12815 of 2000 is concerned, in the aforesaid case, the petitioner of that petition had earlier filed a writ petition before this Court and this Court (Coram : S.K. Keshote, J.) in the earlier petition, being Special Civil Application No.1990 of 1999, directed the disciplinary authority to complete the departmental proceedings within six months. It was observed by this Court in the said Special Civil Application that in case of exoneration of the petitioner in the departmental proceedings, the respondents will have to compensate the petitioner therein by awarding interest at a reasonable rate. In the facts and circumstances of that case, ultimately, this Court, while allowing Special Civil Application No.12815 of 2000, awarded interest in favour of the petitioner at the rate of 12% per annum. The aforesaid order was passed by this Court after considering the earlier direction given by this Court, which was given in favour of that very petitioner as well as considering the Government Policies and Resolutions. This Court has not laid down any proposition of law and in the facts and circumstances of that case, the aforesaid directions were given.

Considering the judgment of the Apex Court in R. Veerabhadram v. Govt. of A.P., (1999) 9 SCC 43 (supra), I am of the opinion that it cannot be said that the amount of commuted pension or benefit of higher grade scale was withheld deliberately or without any justification. For such delay payment, appropriate explanation has already been given in the affidavit-in-reply and moment the petitioner was exonerated, the aforesaid amount was made available to him. It is required to be noted that under the provisions of Rule 189-A of BCSR, the Government is entitled to withhold the aforesaid amounts when the enquiry is pending against the Government Officer. It is no doubt true that so far as the payment of gratuity is concerned, Resolution has been passed by the Government that in case the employee is exonerated, he is required to be paid interest on delayed payment of gratuity at the rate of 12% per annum from a particular date. But, the aforesaid Resolution is applicable only so far as payment of gratuity is concerned and there is a specific Resolution for that purpose. It is not in dispute that there is no such Resolution so far as delayed payment of commuted pension or delayed payment regarding higher grade scale is concerned. When there is no provision for

interest regarding the aforesaid two counts, the only point which is required to be considered is whether there was any justification on the part of the State Government to withhold the aforesaid amount or whether the action on the part of the State in withholding the aforesaid amounts was arbitrary or was tainted with any mala fide intention. If the delay in withholding of the aforesaid amount is properly explained by the State, then, there is no question of awarding any interest for such delayed payment, especially when there are no specific Resolutions in this behalf so far as the aforesaid two counts are concerned. In my view, therefore, the specific Resolution, which is passed for delayed payment of gratuity, cannot be made applicable so far as the delayed payment of commuted pension or higher grade scale is concerned. In that view of the matter, it is required to be found out whether the aforesaid amount was withheld without any valid reason. In the instant case, it is not in dispute that the departmental enquiry was pending against the petitioner at the relevant time and under Rule 189-A of the BCSR, Government was entitled to withhold the aforesaid amount. On conclusion of enquiry, the aforesaid amount is already released now in favour of the petitioner. It cannot be said that there was no valid reason for withholding the said amount. It cannot be said that there was no justification on the part of the State Government to withhold the aforesaid amount. Since the aforesaid amount was withheld because of valid ground of pendency of enquiry, in my view, it cannot be said that the State Government has acted with illegality or in an arbitrary manner and subsequently, the said amount was also released on conclusion of the said enquiry. However, Mr. Supehia, realising this position, submitted that, in any case, the Government should have released the commuted pension forthwith on conclusion of the enquiry and, there was no reason to delay the said payment for a period of more than 4 to 5 months. It is required to be noted that final decision on the enquiry was taken on 23rd July, 1999 and pension papers were prepared on 15.9.1999, which were submitted to the Director of Pension and ultimately, the pension case was sanctioned on 19.10.1999 and the said amount was paid on 4.11.1999. It is no doubt true that there is a delay of more than three months in payment of commuted pension. Considering the fact that the enquiry was kept pending for a very long time, the Authority should have paid the amount of pension forthwith, or, at least, within a period of 15 days from conclusion of the departmental proceedings and, there was no reason thereafter to delay the case for a period of more than three months. Under these circumstances, though the petitioner is not

entitled to claim any interest for the period of three months for the delayed payment of gratuity from the date of retirement and even though he is not entitled to interest for delayed payment of commuted pension, on the basis of the Resolution of 1994, or for interest for delayed payment of higher grade scale, at least for the period of three months from 1st August, 1999 to 3rd November, 1999, the petitioner is required to be paid interest for non-payment of commuted pension and such interest may be paid by the Department to the petitioner, with interest at the rate of 12% per annum. The respondents accordingly are directed to pay interest to the petitioner for the aforesaid period of three months for delayed payment of commuted pension, as indicated above, with interest at the rate of 12% per annum and the aforesaid amount may be paid to the petitioner at the earliest, at any rate, within a period of one month from the date of receipt of the writ of this Court. Rest of the claims of the petitioner, as stated earlier, is rejected.

The petition is accordingly partly allowed. Rule is made absolute accordingly, with no order as to costs.

Direct service is permitted.

(P.B. Majmudar, J.)

(apj)